



Need for the protection of intellectual property rights

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Abstract

The right to own any corporeal or incorporeal property and their protection thereof allows the proprietor to enjoy the fruits of his hard work. The right to own property under article 300A of the Indian constitution is not only applicable to corporeal property but also gives an ample amount of protection to incorporeal property. The rights that follow such property may be infringed or there might be threat of infringement. So in order to seek appropriate remedies the owner or owners of such intellectual property can knock the doors of any court of law.

The world intellectual property organization has recently come up with a new development agenda that emphasizes the use of intellectual property for social, economic and cultural development through the committee on development and intellectual property and the development agenda coordination division.

Through the introduction of new policies by many countries that are in tune with the TRIPS (Trade related aspects of intellectual property rights) and with that of the policies of WIPO, a radicle change is brought about to the economies of various developing and least developed countries.

The above mentioned series of agenda and goals can be attained only if a minimum level of protection is guaranteed by each country to the respective intellectual property and their ancillary rights.

Keywords: intellectual property rights, patent, copyright, designs, trademark, geographical indication

1. Introduction

Intellectual property is an incorporeal property that cannot be physically touched or felt. Intellectual property rights are the rights that are ancillary to an intellectual property. Intellect means the ability to think and reason which is one of the unique features possessed by man that differentiates him from other mammals. Intellectual property is the outcome when human intellect is applied to any object or subject matter that may either be beneficial or harmful to humanity and other beings (nuclear weapons).

The main forms of intellectual property that we come across in our ordinary day-to-day life are patents, copyrights, designs, trademarks etc. Each type of intellectual property requires adequate protection. We have a number of enactments for the same. The notable ones are, the Copyright Act, 1957, the Patents Act, 1970, the Trade and Merchandise Marks Act, 1958 or the Trade Marks Act, 1999, the Semiconductor Integrated Circuits Layout-Design Act, 2000 etc.

Patent ^[1]

Patent is a grant from a concerned authority to have monopoly rights over an invention to a person called the patentee. The Indian Patents Act, 1970 ^[2] makes provisions for the application, filing, procedure, grant and the subject matters that can be patented. Usually an inventor certificate is issued to a patentee and he can enjoy the fruits of his work for a statutory period of about 7 10 or 20 years as the case may be. After exhaustion of the granted time, the patentee has to give up his invention for the general use of the public without further postponement. On obtaining an inventor certificate, the

patentee can

1. Use or exploit his invention
2. Assign his interest in such grant to any other individual or industry of his choice.
3. Encourage further research and development of the patented material.
4. Obtain profits out of his invention
5. Obtain compensation ^[3] in surrender of his right etc.

Need for Protection.

1. Patents play a major role in the development of a country's economy as it helps to improvise the process of manufacturing under industries.
2. Industrial development in turn helps to raise the level of annual GDP, thus helping the nation to compete in the international scenario.
3. Invention in the aspect of pharmaceutical industries will help in obtaining drugs at a cheap rate. Such rights would encourage the scientists or researchers to develop new drugs to cure any incurable diseases.
4. It helps in effective allocation of resources without creating any waste or by helping to reduce wastage.
5. After the invention has entered for the use for public domain, it will be much cheaper than it used to be marketed for.
6. Some of the dreadful diseases such as AIDS, cancer, Hepatitis etc. may be combated with the help of pharmaceutical inventions.

Copyright

Copyright is a right exclusively given to the author or the owner of a literary or artistic work. The works that can be protected are books, short stories, plays, artwork, cinematographic films, music albums, song lyrics, computer programmes etc. copyright allows the owner or creator to print, publish, record or perform the work for which such an exclusive right is granted to him. The copyright aspect in India is controlled under the Indian copyright Act, 1957^[4].

Need for Protection

1. The need for the protection of the above-mentioned works through a copyright is to prevent others from misusing the owner's work.
2. To make the owner or author, the sole person who can exploit his work, translate his work, perform or screen his work before the public.
3. To ensure that the owner of such copyright can make profit out of his work.
4. In case of infringement of the owners right, to avail right to sue by him or any other person claiming under him.
5. To prevent plagiarism of the works of an author or owners of various copyrights.
6. Due to the profit made by an individual, the standard of living of that person will increase and in turn, the nation's per capita income will rise.
7. Copyright gives global recognition to a work, which might be profitable to an indigenous author.
8. In order to protect our nation's culture, there is a need to have effective and more efficient copyright and related rights.

Some famous copyright cases

MGM Studios, Inc. v. Grokster, Ltd^[5], Apple v. Microsoft^[6], Apple v. Google, Cariou v. Prince^[7], Warner Bros entertainment Inc. v. RDR books^[8].

Trademark

Trademark is defined under section 2(zb) of The Trademarks Act, 1999^[9].

It is a mark which can be represented graphically and which is capable of distinguishing the goods or services of a person from that of the others. A trademark also includes the shape of goods, their packaging and combination of colours i.e., trade dress

Trade dress is the manner and mode, which is necessary in the commercial world for increasing the marketing of a given product. For instance, the packaging of the aerated beverage Coca-Cola in a bottle exclusively designed for it.

In simple words, a Trademark includes any mark, logo, signature, ticket, a heading, brand etc. that can be used in the commercial sector by a business enterprise. It forms an important aspect to draw the consumers' acquiescence with a trademark to obtain profits and gains from a business. It may also be called as the lifeline of a business entity since it gives an identity to a product that is so manufactured under the trademark.

The main reason for the protection of a trademark is

1. To distinguish a product from other like products in the market.

2. To prevent the market players from deceiving the consumers.
3. To give a unique identity to the products of a manufacturer.
4. Trademark and trade dress help in the identification of goods
5. It helps the consumers to ascertain the quality of the goods

Thus, through the development of a strong foundation in the market, the products under a trademark help to combat unfair competition and deception. The country in which a well-established business system has been maintained will compete with other countries to gain profit.

Some examples of Trademarks

Pepsi, coca cola, KFC, Nike, Skechers, adidas, puma, Microsoft, Apple, Samsung, Domino's, Sony, Louis Vuitton, Gucci, Ray-ban etc.

Design

Section 2(d) of The Designs Act, 2000^[10] defines the word "design"

Design can be any feature, pattern, or even composition of lines or colours that is applied to any article either in two dimensions or in three dimensions or in both specifically through an industrial process which may either be manual, mechanical or chemical, to the finished article and such an article is to be judged solely by human eyes.

Further, a design does not include any of the following

1. Trademark as defined in section 2(1)(v) of the Trade and Merchandise Marks Act, 1958
2. property mark as defined in section 479 of the Indian Penal Code^[11]
3. Any kind of an artistic work as defined under section 2(c) of the Copyright Act, 1957.

Further, some of the designs that cannot be registered for protection under the Act are the ones that contain obscene matters or are detrimental to the morality of the public or if they lack originality.

Need for Protection

The main purpose for the protection of design is to influence the business sector in a country and to add up on the extent of profit made.

Designs are generally protected in order to ensure a fair return in business since it relates to the aesthetic aspect. In India, designs are protected under The Designs Act, 2000. This Act provides certain essential features for a particular design to be eligible for protection. They are,

1. The design must be attractive.
2. It must draw a quench for purchase.
3. It must be appealing to our eyes.

Designs that are protected allows an entrepreneur to gain both profit as well as recognition for his skill

The creator of such designs will be rewarded and the skill put forth by him can be utilized for the country's welfare and development.

Some well-known designs

Cipher drinking glass, iPhone/iPad, moody aquarium sink, Federal Triangle Subway station – Washington DC, Electronic Luggage Tag, Spiral stairs of the Vatican Museums, designed by Giuseppe Momo in 1932, Sensory Deprivation Chamber.

Geographical Indication (GI)

GI is defined under section 2(3) (e) of The Geographical indication of Goods (Registration and Protection) Act, 1999 [12].

Geographical indication means an indication by which any agricultural goods or manufactured products can be identified as originating or as being manufactured from a specific country or in a region or locality of that country. Further, the reputation and other characteristics of such goods can be attributed to its geographical origin or to the place where production, processing or preparation of the goods or products take place.

Need for Protection

Geographical indication is an indicator of goods with the use of a region, a place or any locality from where it has originated.

1. Usually Geographical indications helps the people to recognise the goods that are unique to its name and also such a protection will leave an everlasting impression in the minds of the people who consume such products.
2. It sets a particular standard to a product concerned and thus maintains its popularity as such in the nation as well as in the global market.
3. Geographical indications help in easy identification of goods
4. It helps to gain international recognition of a particular region and the product will gain more popularity. Such recognition will help in raising the profits of a business entity producing and marketing the product so protected as a geographical indication of a specific region.
5. It also helps to gain a stand in the global market for continuing the production of such products protected under the Geographical Indication Act.

Some examples,

Mysore Pak, Mysore silk, champagne, Darjeeling Tea, Tirupati Laddu, Hyderabad Haleem, Dharmavaram Handloom Pattu Sarees and Paavadais, Dharwad Pedha, Kancheepuram Silk, Orissa Pattachitra, Nirmal Toys and Crafts, Banaras Brocades and Sarees, Andhra Pradesh Leather Puppetry, Vazhakkulam Pineapple, Scotch Whisky etc.

Conclusion

Intellectual property rights and their protection play a key role in the present era where science and technology are of utmost importance. Mere development in one of the economic sectors will not pave the way for the all-round development of a country. When a country wants to improvise in the technological and scientific arena, it needs the essential infrastructures to do so. Therefore, if a country lacks the latter aspect but has the necessary manpower and intelligence, it would not be fruitful.

For a country to achieve its goal of overall development and to

ensure a better standard of living to its citizens, it has to cope with the growing needs and demands of technology. Such an improvisation in technology needs to be backed by strong substantive laws. In addition, a country has to provide for an effective procedure for the enforcement of any of the intellectual property rights.

In order to ensure a systematic utilisation of the outcomes of any intellectual property, a country has to strengthen its national laws relating to protection of intellectual property rights and subsequently it has to compete with the rest of the world by making the best out of its indigenous resources. Thus, protection of intellectual property rights coupled with sustainable development aspect can help a country to have a stand in the global economy.

References

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5. 545 U.S. 913 (2005)
6. 35 F.3d 1435 (9th Cir. 1994)
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11. ACT NO. 45 OF 1860 [6th October, 1860]
12. ACT NO. 48 OF 1999 [30th December, 1999.]